

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
INDIVIDUAL PRACTICES OF JUDGE LAURA TAYLOR SWAIN

The following Individual Practices Rules apply to all civil and criminal matters pending before Judge Swain on and after August 21, 2008.

Unless otherwise ordered by Judge Swain, matters before Judge Swain shall be conducted in accordance with the following practices:

1. Communications with Chambers

A. Letters. Except as otherwise provided below, communications with Chambers shall be by letter, with copies delivered simultaneously to all counsel. All correspondence must be labeled with the name and docket number of the case, the Judge's initials (LTS), and (for civil cases) the Magistrate Judge's initials. Copies of correspondence between counsel shall not be sent to the Court. Prior to requesting judicial action, the requesting counsel shall consult with all other parties in an effort to obtain their consent to the request. The letter to the Court shall confirm that such effort has been made and shall indicate whether the request is being made on consent. See also Paragraph 2.B. below.

B. Telephone Calls. Except as provided in Paragraph D. below, telephone calls to Chambers are permitted only in emergency situations requiring immediate attention. In such situations only, call Chambers at (212) 805-0417.

C. Faxes. Faxes to Chambers are permitted only if copies are also faxed or delivered simultaneously to all counsel. No document longer than five (5) pages may be faxed without prior authorization. Do not follow with hard copy. The fax number is (212) 805-0426.

D. Docketing, Scheduling, and Calendar Matters. For docketing, scheduling and calendar matters, call Mrs. Lisa Ng at (212) 805-0424.

E. Requests for Adjournments or Extensions of Time. All requests for adjournments or extensions of time must be made in writing, with copies to all other counsel and/or unrepresented parties, and must state (1) the original date, (2) the number of previous requests for adjournment or extension, (3) whether these previous requests were granted or denied, and (4) whether the adversary consents, and, if not, the reasons given by the adversary for refusing to consent. *If the requested adjournment or extension affects any other scheduled dates, a proposed Revised Scheduling Order must be attached.* If the request is for an adjournment of a court appearance, absent an emergency it must be made at least 48 hours prior to the scheduled appearance.

2. Motions

A. Pre-motion conferences in civil cases. For discovery motions, follow Local Civil Rule 37.2. For motions other than discovery motions, pre-motion conferences are not required. *Compliance with the certification requirement of Paragraph B. below is, however, required for all motions, whether discovery-related or not.*

B. Informal efforts to resolve issues required. In civil cases, prior to making a motion of any type, and prior to requesting a conference on any discovery issues, the parties shall use their best efforts to resolve informally the matters in controversy. Such efforts shall include, but need not be limited to, an exchange of letters outlining their respective legal and factual positions on the matters and at least one telephonic or in-person discussion of the matters. If a motion or a discovery conference request remains necessary, the notice of motion or written discovery conference request must include a separate paragraph certifying in clear terms that the movant or requesting party has used its best efforts to resolve informally the matters raised in its submission.

C. Motions for default judgments. A party wishing to obtain a default judgment shall notify the Court by letter (copied to the party against which a default judgment is to be sought) of its desire to seek a default judgment. The Court will direct the party as to whether evidentiary submissions will be required in connection with the motion. Default judgments will be granted only upon written motion with notice to Defendant(s) and their counsel, if known. Copies of the Clerk's Certificate, and of proof of service of the Summons and Complaint and the Motion for Default Judgment, shall be attached to the Motion for Default Judgment.

D. Motions for withdrawal or displacement of attorney of record in civil matters. An attorney who has appeared as attorney of record for a party in a civil matter may be relieved or displaced in accordance with Local Civil Rule 1.4. A motion pursuant to Local Civil Rule 1.4 must be accompanied by (a) an affidavit of the applicant attorney's client, confirming the client's consent to the withdrawal, displacement, substitution or other change in representation or (b) in the absence of such consent, proof of service of the motion on the client.

E. Evidentiary support. Evidentiary support, in admissible form, of all factual assertions relied upon in support of or in opposition to a motion shall be filed and served with the moving or opposition papers, as the case may be. Recitals in notices of motion, attorneys' affirmations, assertions of material factual matters "on information and belief" and the like are generally insufficient to establish factual matters.

F. Briefing. Unless otherwise directed by the Court in the particular case, motions in civil cases shall be briefed in accordance with the schedule set forth in Local Civil Rule 6.1, and motions in criminal cases shall be briefed in accordance with Local Criminal Rule 12.1.

G. Courtesy copies. Except as provided in Paragraph 5.C.2. below, one set of courtesy copies of all pleadings and motion papers, marked as such, shall be submitted to the Court's mail receiving facility, for Chambers, as soon as practicable after filing.

H. Memoranda of law. Unless prior permission has been granted, memoranda of law in support of and in opposition to motions are limited to 25 pages, and reply memoranda are limited

to 10 pages. Memoranda, including footnotes, shall be printed or typed in a 12-point or larger font and shall have side and top margins of at least one inch. Memoranda of 10 pages or more shall contain a table of contents.

I. Filing of motion papers. Motion papers shall be filed promptly after service.

J. Oral argument and evidentiary proceedings on motions. Parties may request oral argument and/or indicate the need for an evidentiary hearing at the time their moving, opposing or reply papers are filed, by including a conspicuous notation of the request on the cover page of the relevant paper. The Court will determine whether argument will be heard and/or whether an evidentiary proceeding is required to resolve disputed factual issues and, if it determines that such an argument or proceeding is necessary, will advise counsel of the relevant date.

3. Pretrial Procedures - Civil Cases

A. Joint pretrial statement. A joint pretrial statement shall be filed, and other materials submitted, in accordance with the Pre-Trial Scheduling Order entered in the particular case.

4. Proposed Orders and Judgments

A. Submission of proposed orders and judgments. All proposed orders and judgments, including stipulations to be “so-ordered,” shall be submitted first to the Orders and Judgments Clerk at 500 Pearl Street or in the manner required by the Court’s Electronic Case Filing Procedures, for approval as to form before being submitted for Chambers.

5. Criminal Matters

A. Initial pre-trial conference. The Assistant U.S. Attorney shall contact Chambers as soon as possible after the case is assigned to Judge Swain. The Assistant shall provide all pertinent information to Chambers, including a faxed copy of the information/indictment. The Courtroom Deputy will set up a conference/arraignment.

B. Substitution of counsel. When there is a substitution of defense counsel, counsel of record must contact Mrs. Durocher (the Courtroom Deputy) to schedule a conference. At the conference, the Court will address the application by defense counsel to be relieved. The defendant, counsel of record, the proposed replacement counsel, and the Assistant United States Attorney must all attend the conference.

C. Motions in criminal cases.

1. Counsel are expected to comply with Local Criminal Rule 16.1. Any motion described in that Rule must include a Rule 16.1 affidavit.

2. Counsel shall provide two courtesy copies of all motion papers to Chambers. The memoranda of law should also be provided to the Court on a 3.5" diskette or CD in WordPerfect version 6 or higher format.

3. Except for good cause shown, all motions *in limine* shall be interposed so as to permit full briefing prior to the final pretrial conference date.

D. Pleas. The plea agreement or Pimentel letter must be provided to Chambers at least two full business days before the time set for the conference at which the disposition is to be addressed. Defense counsel are expected to have reviewed any plea, cooperation, or other agreement, as well as any Advice of Rights form provided to counsel by the Court – with the assistance of an interpreter, if necessary – with the defendant prior to the time set for the conference with the Court.

E. Sentencing.

1. Any request for adjournment of a sentencing shall be made in writing as early as possible, but no later than three business days before the date at issue. Such requests should state whether opposing counsel consents.

2. All submissions and applications with respect to a sentencing shall be served and submitted to the Court in sufficient time to ensure that the Court has received all such papers and all responses thereto no later than seven (7) days prior to the sentencing.